IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No.303-SB of 1995
Date of Decision : March 20, 2007.

Sarup Singh ..... Appellant

Vs.

State of Haryana ..... Respondent

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.Gurcharan Singh Gandhi, Advocate
for the appellant.

Mr.Ashutosh Hoshiarpuri, AAG, Punjab.

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MAHESH GROVER, J. (Oral) :

The appellant was directed to pay a sum of Rs.20,000/- as penalty, pursuant to provisions of Section 446 of the Cr.P.C. He had stood surety for his brother Mohan Singh, who was facing trial in an offence registered vide FIR No.21 dated 2.2.1989 under the provisions of Section 307/392 of the IPC read with Section 25 of the Arms Act and Section 3/4 of the TADA Act.

The said Mohan Singh is stated to have absented himself on 27.1.1993. Notice was issued to the appellant who was the surety, as to why the amount mentioned in the surety bonds be not realised from him, to which the appellant responded by furnishing an affidavit stating that Mohan Singh has been killed by the police near Chugitti and news item to that effect had been published in Daily Ajit dated 20.02.1993 disclosing the aforesaid fact. He is alleged to have filed a cutting of that newspaper along with his affidavit.

The Court of Additional Judge, Designated Court, Kapurthala at Jalandhar disbelieved the version given by the appellant in his affidavit and proceeded to impose the aforesaid penalty upon him vide his order dated 14.3.1995.

It has been contended by the learned counsel for the appellant that Mohan Singh had been killed in an encounter by the police and this fact was known to the respondent but yet the proceedings under Section 446 were initiated against him and the aforesaid penalty was imposed.

On the other hand, learned counsel for the State has contended that there was no evidence that Mohan Singh had been killed by the police as claimed by the appellant. Since the appellant was a surety, it was his bounden duty to produce Mohan Singh in court.

I have heard learned counsel for the parties and have perused the record.

The Designated Court passed this order on 14.3.1995 but the same court was oblivious of the fact that vide orders dated 11.2.1995, it itself had noticed that Mohan Singh had since died. The relevant order dated 11.2.1995 is as follows :-

> *"Challan was presented against Mohan Singh (since dead), Harnek Singh and Gurmail Singh, accused pertaining to F.I.R.No.31 dated 2.2.1989, under Sections 392/397/307/34 I.P.C., and under Section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 of Police Station G.R.P., Jalandhar. Accused Mohan Singh was reported to have died. So no action is called for against him. Accused Harnek Singh and Gurmail Singh were declared as proclaimed offenders. Evidence was recorded against the accused u/s 299 of the Code of*

Criminal Procedure.

2. The prosecution examined PW1 Inspector Amarjit Singh, PW2 Swaranjit Singh and PW3 Shamsher Singh, ASI, and the learned Addl. Public Prosecutor closed the case of the prosecution at this stage with the request that he would produce the remaining evidence as and when the accused are apprehended.

3. In view of this the challan case no.478 of 1991 titled State versus Mohan Singh etc. be consigned to the record room and it be revived as and when the accused Harnek Singh and Gurmail Singh are apprehended."

Once the factum of death of Mohan Singh was in the knowledge of the Designated Court much prior to the passing of this order, the subsequent order was completely an order in perversity and contrary to the record.

For the aforesaid reasons, the impugned order is set aside and the appeal is allowed.

March 20, 2007 **(MAHESH GROVER)**
monika **JUDGE**